

United States
Circuit Court of Appeals

For the Ninth Circuit.

HARRY DEAN,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Southern District of California,
Southern Division.

FILED

MAR 15 1920

F. D. MONCKTON,
CLERK

United States
Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1813—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Citation to Writ of Error.

United States of America,
Southern District of California,
Southern Division,—ss.

To the United States of America, and to ROBERT
S. O'CONNOR, United States Attorney for the
Southern District of California, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit, at San Francisco,
California, within thirty (30) days from the date
hereof, pursuant to the writ of error filed in the
clerk's office of the District Court of the United
States for the Southern District of California, South-
ern Division, wherein Harry Dean is plaintiff in
error, and you are the defendant in error, to show
cause, if any there be, why the judgment of the said
writ of error mentioned, should not be corrected
and speedy justice should not be done to the parties
in that behalf.

GIVEN under my hand at Los Angeles, California,
in said District, this 13th day of January, 1920.

TRIPPET,

Judge of the United States District Court in and for
the Southern District of California, Southern
Division.

O. K.—GORDON LAWSON.

[Endorsed]: No. 1813—Crim. In the District
Court of the United States, in and for the Southern
District of California, Southern Division. United
States of America, Plaintiff, vs. Harry Dean, De-
fendant. Citation to Writ of Error. Filed Jan. 13,
1920, at 40 min. past 11 o'clock A. M. Chas. N.
Williams, Clerk. Louis J. Somers, Deputy.

Received copy of the within this 12th day of Jan-
uary, 1920.

GORDON LAWSON,
Asst. U. S. Atty.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1813—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Writ of Error.

United States of America,—ss.

The President of the United States of America, to
the Honorable Judge of the District Court of the
United States for the Southern District of Cali-
fornia, Southern Division, GREETING:

Because in the record and proceedings, and also
in the rendition of the judgment of a plea which is in
said District Court before you, between Harry Dean,
plaintiff in error, and the United States of America,
defendant in error, a manifest error has happened,
to the great damage of said Harry Dean, plaintiff
in error, as by his complaint appears. We being
willing that error, if any hath happened, should be
duly corrected and full and speedy justice done to
the parties aforesaid, do command you, if judgment
be therein given, that then, under your seal, dis-
tinctly and openly, you send the records and proceed-
ings aforesaid, and all things concerning the same,
to the United States Circuit Court of Appeals, for
the Ninth Circuit, together with this writ, so that you
have the same at the city of San Francisco, in the
State of California, within thirty (30) days from the
date hereof, in the said United States Circuit Court
of Appeals, to be then and there held, that the record
and proceedings aforesaid, being inspected, the said
Circuit Court of Appeals may cause further to be
done therein, to correct that error what of right and
according to the laws and customs of the United
States should be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 13th day of January, 1920.

[Seal] CHAS. N. WILLIAMS,
Clerk of the United States District Court in and for
the Southern District of California, Southern
Division.

By R. S. Zimmerman,
Deputy.

Allowed by:

OSCAR A. TRIPPET,
Judge.

O. K.—GORDON LAWSON.

[Endorsed]: No. 1813—Crim. In the District Court of the United States, in and for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. Harry Dean, Defendant. Writ of Error. Filed Jan. 13, 1920, at 40 min, past 11 o'clock A. M. Chas. N. Williams, Clerk. Louis J. Somers, Deputy.

Received copy of the within this 12th day of January, 1920.

GORDON LAWSON,
Asst. U. S. Atty.

Names and Addresses of Attorneys.

For Plaintiff in Error:

WARREN L. WILLIAMS,

SEYMOUR S. SILVERTON,

307 South Hill Street, Los Angeles, California.

For Defendant in Error:

ROBERT O'CONNOR, United States Attorney, Los Angeles, California.

GORDON LAWSON, Assistant United States Attorney, Los Angeles, California. [3*]

In the District Court of the United States, in and for the Southern District of California, Southern Division.

Indictment.

Viol. Act Feb. 24, 1919, an Amendment to Harrison Narcotic Act.

At a stated term of said court, begun and holden at the city of Los Angeles, within the Southern Division of the Southern District of California, on the second Monday of July, in the year of our Lord one thousand nine hundred and nineteen,—

The Grand Jurors of the United States of America, duly chosen, selected and sworn, within and for the Division and District aforesaid, on their oath present:

That HARRY DAY, *alias* HARRY DEAN, hereinafter called the defendant, whose full and true

*Page-number appearing at foot of page of original certified Transcript of Record.

name is other than as herein stated, to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to wit, on or about the 12th day of July, in the year of our Lord one thousand nine hundred and nineteen, at the city of Los Angeles, County of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, did knowingly, wilfully, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute cocaine in and from a certain tin box, which said tin box was not then and there the original stamped package containing the said cocaine, that is to say: the said defendant did, at the time and place aforesaid, have in his possession at the corner of Figueroa Street and Sunset Boulevard, in the said city of Los Angeles, county of Los Angeles, the said tin box then and there containing the said cocaine, which said cocaine was then and there a compound, manufacture, salt, [4] derivative and preparation of cocoa leaves, and the said cocaine contained in the said tin box then and there consisted of about one-half ($\frac{1}{2}$) of an ounce; and the said tin box then and there containing the said cocaine did not then and there bear and have affixed thereon appropriate tax paid stamps, as required in an Act of Congress approved February 24, 1919, amending an Act of Congress approved December 17, 1914, known as the "Harrison Narcotic Law"; and the said cocaine was not then and there obtained from a registered dealer in pursuance of a prescription written for legitimate medical uses, issued by a physician, dentist, veterinary, surgeon, or

other practitioner registered under the said act; and the said tin box containing the said cocaine did not then and there bear the name and registry number of a druggist, serial number of a prescription, name and address of a patient, and name, address and registry number of the person writing the said prescription; that the said cocaine was not then and there dispensed, administered or given away to a patient by a registered physician, dentist, veterinary surgeon, or other practitioner in the course of his professional practice, and a record kept of the said dispensation, administration and giving away of the said cocaine, as required by the said act.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States. [5]

SECOND COUNT.

And the Grand Jurors aforesaid, on their oath aforesaid, do further present:

That HARRY DAY, *alias* HARRY DEAN, hereinafter called the defendant, whose full and true name is, other than as herein stated, to the Grand Jurors unknown, late of the Southern Division of the Southern District of California, heretofore, to wit, on or about the 12th day of July, in the year of our Lord one thousand nine hundred and nineteen, at the city of Los Angeles county of Los Angeles, within the Division and District aforesaid, and within the jurisdiction of this Honorable Court, did knowingly, willfully, unlawfully, fraudulently and feloniously purchase, sell, dispense and distribute morphine sulphate, cocaine and heroin in and from certain boxes

and glass tubes, which said boxes and glass tubes were not then and there the original stamped packages containing the said morphine sulphate, cocaine and heroin, that is to say: the said defendant did, at the time and place aforesaid, have in his possession, at #1533 West Temple Street, in the said city of Los Angeles, county of Los Angeles, the said boxes and glass tubes then and there containing the said morphine sulphate, cocaine and heroin; the said morphine sulphate, a compound, manufacture, salt, derivative and preparation of opium, was then and there contained in two (2) small boxes, which said boxes then and there contained one (1) ounce of the said morphine sulphate; the said cocaine, a compound, manufacture, salt, derivative and preparation of cocoa leaves, was then and there contained in a small metal box, which contained about one-half ($\frac{1}{2}$) of an ounce of the said cocaine; and the said heroin, a compound, manufacture, salt, derivative and preparation of [6] opium, was then and there contained in two (2) glass tubes, which said glass tubes then and there contained about 100 tablets of the said heroin; and any and either of the aforesaid boxes and glass tubes did not then and there bear and have affixed thereon appropriate tax-paid stamps, as required in the said act; and the said morphine sulphate, cocaine, and heroin was not then and there obtained from a registered dealer, in pursuance of a prescription written for legitimate medical uses, issued by a physician, dentist, veterinary surgeon, or other practitioner registered under an Act of Congress approved February 24, 1919, amending an Act

of Congress approved December 17, 1914, known as the Harrison Narcotic law. And the said boxes and glass tubes, and either of them, containing the said morphine sulphate, cocaine, and heroin did not then and there bear the name and registry number of a druggist, serial number of a prescription, name and address of a patient, and name, address, and registry number of the person writing said prescription. And the said morphine sulphate, cocaine and heroin was not then and there dispensed, administered or given away to a patient by a registered physician, dentist, veterinary surgeon or other practitioner in the course of his professional practice, and a record kept of said dispensation, administration and giving away of the said morphine sulphate, cocaine and heroin, as required by the said act.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the said United States.

GORDON LAWSON,

Assistant United States Attorney,

ROBERT O'CONNOR,

United States Attorney. [7]

[Endorsed]: No. 1813—Crim. United States District Court, Southern District of California, Southern Division. The United States of America vs. Harry Day, *alias* Harry Dean. Indictment—Viol. Act, Feb. 24, 1919, Amendment to Harrison Narcotic Act. A true bill. John McPeak, Foreman. Filed Sep. 4, 1919. Chas. N. Williams, Clerk. Ernest J. Morgan, Deputy. Bail, \$1,000.00. [8]

At a stated term, to wit, the July, A. D. 1919, term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the City of Los Angeles, on Monday, the 15th day of September, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 1813—CRIM.

UNITED STATES OF AMERICA,

Plaintiff.

vs.

HARRY DAY, etc.,

Defendant.

**Minutes of Court—September 15, 1919—
Arraignment and Plea.**

This cause coming on at this time for the arraignment and plea of the defendant; Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for the plaintiff, the defendant on bond together with his counsel S. S. Silverton, Esq., present in open court.

The defendant being duly called and arraigned stated to the Court that his true name is Harry Day, waives the reading of the indictment, and being required to plead to the indictment on file against him at this time, enters his plea of Not Guilty.

This cause is by the Court continued to the October calendar for setting for trial. [9]

At a stated term, to wit, the July, A. D. 1919, term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Wednesday, the 10th day of December, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

CONSOLIDATED.

No. 1813—CRIM. S. D.

No. 1847—CRIM. S. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Minutes of Court—December 10, 1919—Trial.

This consolidated cause coming on before the Court and a jury to be impanelled herein; and defendant being present with his counsel, Warren Williams, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorney, present for plaintiff, and counsel for both sides being now ready to proceed with the trial of this cause, and the Court having so ordered that the trial proceed, and that a jury of twelve (12) men be duly impanelled herein, and the following twelve (12) men having been duly drawn from the box, called and sworn on *voir dire*, to wit: Henry C. Bohrmann,

Paul T. Wayne, Chas. W. Hardy, Lovell Swisher, Jr., Karl Klokke, E. J. Vawter, Jr., Edward A. Talbot, George R. Bentel, P. J. Beveridge, A. Sidney Jones, Frank Griffith, H. W. Keller, and the Indictment in each of said cases having been read to the jury, and the jury having been examined by the Court and passed for cause, and A. Sidney Jones, a petit juror herein, for cause shown is now by the Court excused, and J. W. Montgomery, a petit juror, having been called in the place of said juror so excused and having been sworn on *voir dire*, examined by the Court [12] and by counsel for respective parties, and passed for cause; and the plaintiff having at this time exercised no peremptory challenges; and the following named petit jurors having been by the counsel for the defendant peremptorily challenged, to wit: Charles W. Hardy, Karl Klokke, E. J. Vawter, Jr., Edward A. Talbot, and P. J. Beveridge, and as so challenged, said petit jurors excused by the Court; and the names of five (5) other petit jurors having been drawn from the box, called and sworn on *voir dire*, and examined by the Court and passed for cause, to wit: C. H. Lippincott, W. T. Selleck, J. S. Stotler, Ray R. Thomas, E. B. Rivers, and said five jurors having also been passed for cause by counsel for respective parties and no peremptory challenges having been exercised by the plaintiff; and C. H. Lippincott, W. T. Selleck, J. S. Stotler and Ray R. Thomas, having been peremptorily challenged by the defendant, and by the Court excused.

And it appearing to the Court that from challenges and otherwise there is not a petit jury to determine

this cause, it is thereupon by the Court ordered that a special venire of ten (10) jurors be drawn from the bystanders be issued herein, returnable at 2:00 o'clock P. M. of this day, to complete the panel in the cause entitled the United States of America, Plaintiff, vs. Harry Dean, Defendant, Nos. 1813 and 1847—Crim. Consolidated, for the purpose of trial; and,

The Court at the hour of 11:30 o'clock A. M. having taken a recess until 2 o'clock P. M. of this day, and,

Now, at the hour of 2 o'clock P. M. of this date, the Court having reconvened and all the parties being present as before, and the U. S. Marshal having made his return of the special venire, heretofore issued herein, and the names of the special veniremen having been called and all having answered present, to wit: George S. Wilson, H. L. Hovey, C. H. Conrad, A. D. Patterson, Frank C. Wallace, E. D. Robinson, Thomas [13] Strohm, J. A. Bothwell, J. M. Fix and D. F. Brandt, the said special jurors having been sworn and having been examined by the Court as to their qualifications and having been accepted by the Court as special jurors, and their names thereupon being placed in the jury-box, and the Court having ordered that four (4) names be drawn from the box and the names of George S. Wilson, H. L. Hovey, J. A. Bothwell and J. M. Fix, having been drawn from the box, and the Court thereupon having read both of the indictments in the two cases now on trial and having examined the said four jurors for cause and said jurors having been examined by counsel of

the respective parties, and passed for cause and H. L. Hovey, having been peremptorily challenged by Gordon Lawson, Esq., counsel for plaintiff, and excused; and George S. Wilson having been peremptorily challenged by Warren Williams, Esq., of counsel for the defendant and excused; and the names of Thomas Strohm, E. D. Robinson having been duly drawn, and said jurors having been called and examined by the Court and counsel for respective parties for cause and passed for cause, and Thomas Strohm having been peremptorily challenged by Gordon Lawson, Esq., counsel for the Government, and excused, and the name of C. H. Conrad having been drawn and said venireman called and examined by the Court and by counsel for respective parties for cause, and passed for cause, and said jurors now in the box, having been accepted and duly sworn to try this cause, said jury being as follows, to wit:

(JURY)

- | | |
|-------------------------|-----------------------|
| 1. Henry C. Bohrmann, | 7. E. B. Rivers, |
| 2. Paul T. Wayne, | 8. J. A. Bothwell, |
| 3. Lovell Swisher, Jr., | 9. J. M. Fix, |
| 4. George R. Bentel, | 10. E. D. Robinson, |
| 5. Frank Griffith, | 11. C. H. Conrad, |
| 6. H. W. Keller, | 12. J. W. Montgomery. |

And the Court having ordered that the trial of said causes be proceeded with, and Gordon Lawson, Esq., Assistant [14] U. S. Attorney, having waived an opening statement, and a motion of Warren Williams, Esq., counsel for defendant as aforesaid, to exclude all witnesses from the courtroom except the

witness on the stand, having been denied by the Court, to which ruling of the Court counsel for the defendant having requested that an exception be noted; and,

Walter H. Austin, a witness for the plaintiff, having been duly called, sworn and testifies for the United States, and the following exhibits on behalf of the plaintiff having been offered and filed in evidence, as follows, to wit:

“U. S. Ex. 1—Tin box with loose tissue paper wrapper.”

“U. S. Ex. 2—Scales in wooden case.”

“U. S. Ex. 3—Shaving stick box and paper box.”

“U. S. Ex. 4—Two tubes of tablets.”

“U. S. Ex. 5—Small bottle white powder.”

“U. S. Ex. 6—Hypodermic needle in box.”

“U. S. Ex. 7—Small scales.”

“U. S. Ex. 8—Small spoon.”

“U. S. Ex. 9—Four (4) small pill boxes.”

“U. S. Ex. 10—Small box labeled ‘The Athens,’ etc.”

“U. S. Ex. 11—Four slips of paper,” and,

Howard J. Brooks, being duly called, sworn and testifies for the United States; and,

Daisy G. Webb, being duly called, sworn and testifies for the United States; and

C. W. Montgomery, being duly called, sworn and testifies for the plaintiff; and the following exhibits on behalf of the plaintiff having been offered and filed in evidence as follows, to wit:

“U. S. Ex. 12—A large box of sundry articles.”

“U. S. Ex. 13—A package of small pill boxes, and bundle of sundry articles, including a lady’s purse, etc,” and,

Now at the hour of 3:40 o’clock P. M. the Court having admonished the jury that during the progress of this case [15] they are not to permit other persons to talk to them, nor themselves talk to other persons about this case, or anything connected with this case, and that, until said cause is finally given them for consideration under the instruction of the Court, they are not to talk with each other about this case, or anything connected therewith; and a recess having been taken for five (5) minutes, and thereafter at the hour of 3:45 o’clock P. M. the Court having reconvened, and counsel being present as before, and the shorthand reporter being present, and the jury all being present, and

C. W. Montgomery, a witness on behalf of the plaintiff, heretofore sworn, now resumes the stand, and having testified herein; and,

O. S. Kuuzman, having been duly called, sworn and testifies for the United States; and,

T. F. O’Brien, having been called, sworn and having testified for the plaintiff herein; and,

Mrs. Anna Johnson, having been called, sworn and testified for the United States; and,

Arthur R. Maas, having been called, sworn, and testified herein for the plaintiff; and,

Now, at the hour of 4:05 o’clock P. M., the plaintiff having no further testimony to offer in evidence, thereupon rests.

And a motion of Warren Williams, Esq., counsel for defendant as aforesaid, for an instructed verdict of acquittal, having been denied by the Court, to which ruling of the Court, counsel for defendant having requested that an exception be noted; and,

Harry Dean, a witness for the defendant, having been called, sworn and testified for the defendant; and,

A motion having been made by Gordon Lawson, Esq., [16] counsel for plaintiff herein as aforesaid, the Court ordered that Arthur R. Maas be permitted to temporarily withdraw U. S. Ex. 7 and two pair of small scales included in box marked U. S. Ex. 12; and,

Now, at the hour of 4:50 o'clock P. M., the Court having given the jury the usual admonition, now takes a recess until 10 o'clock A. M., Thursday, December, 11th, 1919. [17]

At a stated term, to wit, the July, A. D. 1919, term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 11th day of December, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

CONSOLIDATED.

No. 1813—CRIM. S. D.

No. 1847—CRIM. S. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

**Minutes of Court—December 11, 1919—Trial
(Continued).**

This consolidated cause, coming on before the Court and a jury heretofore impaneled for further trial; and defendant being present with his counsel, Warren Williams, Esq., and Gordon Lawson, Esq., Assistant U. S. Attorney, present for the Government; and W. C. Wren, an official shorthand reporter, being present and acting as such; and the jury all being present; and it appearing that Warren Williams, Esq., attorney for defendant, is engaged in the impanelment of a jury in the Honorable Judge Trippet's court, at this time, it is ordered, at the hour of 10:35 o'clock A. M., that a recess be taken until the completion of that impanelment; and,

Now, at the hour of 11 o'clock A. M., the Court having reconvened, and all the parties being present as before; and

The defendant having no further testimony to offer in evidence, thereupon rests his case; and,

The plaintiff, having no rebuttal testimony to offer at this time, rests his case; and, [18]

Warren L. Williams, Esq., attorney for defendant as aforesaid, having moved the Court for an instructed verdict of acquittal, which motion having been denied by the Court, to which ruling of the Court counsel for defendant having requested that an exception be noted; and,

Gordon Lawson, Esq., Assistant U. S. Attorney, counsel for plaintiff, now makes opening argument on behalf of the plaintiff, and having concluded same; and Warren L. Williams, Esq., counsel for defendant, having argued in opposition thereto and having concluded same; and Gordon Lawson now makes his closing argument on behalf of the plaintiff, and having concluded the same, and,

The Court having given its instructions to the jury; and,

Warren L. Williams, Esq., counsel for defendant, having noted exceptions to all instructions, and having excepted to refusal of the Court to give defendant's requested instructions, and having excepted to comments of the Court on evidence and now at the hour of 12 o'clock Alfred Moore, a deputy U. S. Marshal, having been duly sworn as bailiff to take charge of the jury, and the jury having retired in charge of said sworn bailiff for consideration of their verdict, and thereafter, at the hour of 1 o'clock P. M., the jury having returned for further instructions; and defendant and counsel for both sides being present as before; and further instructions having been given; and now at the hour of 1:05 o'clock P. M., the jury having retired in charge of aforesaid sworn bailiff for further consideration of their verdict; and now,

at the hour of 1:10 o'clock P. M., it is ordered that the jury be taken out to lunch in charge of said sworn bailiff, said lunch to be at the expense of the United States; and,

The Court at the hour of 1:10 o'clock P. M. of this date, having taken a recess until the incoming of the jury; [19] and,

Now, at the hour of 3 o'clock P. M. of this date, the Court having reconvened, and defendant and attorneys for both parties being present as before, and the jury having returned into court, and having been requested to present their verdict in each of said causes, and said jurors through their foreman having presented their verdicts, which verdicts are read by the clerk and by the Court ordered filed and entered herein; said verdicts, being as follows, to wit:

“In the District Court of the United States in and for the Southern District of California, Southern Division.

No. 1813—CRIM. S. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

We, the jury in the above-entitled cause, find the defendant Harry Dean Guilty as charged in the first count of the indictment, and Guilty as charged in the second count of the Indictment.

Los Angeles, California, December 11, 1919.

J. M. FIX,
Foreman.”

*“In the District Court of the United States in and
for the Southern District of California, South-
ern Division.*

No. 1847—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

We, the Jury in the above-entitled case, find the de-
fendant Harry Dean Guilty as charged in the Indict-
ment.

Los Angeles, California, December 11th, 1919.

J. M. FIX,
Foreman.”

And a motion having been made by Warren Will-
iams, Esq., counsel for defendant, as aforesaid, this
cause is continued to the hour of 1:30 o'clock P. M.
of Wednesday, December 17th, 1919, for the impos-
ing of sentence. [20]

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

No. 1813—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Verdict.

We, the jury, in the above-entitled case, find the defendant, Harry Dean, guilty as charged in the first count of the indictment, and guilty as charged in the second count of the indictment.

Los Angeles, California, December 11, 1919.

J. M. FIX,

Foreman.

[Endorsed]: No. 1813—Crim. United States District Court, Southern District of California, Southern Division. United States v. Harry Dean. Verdict. Filed Dec. 11, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [21]

At a stated term, to wit, the July, A. D. 1919, term of the District Court of the United States, within and for the Southern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Tuesday, the 30th day of December, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. 1813—Crim. S. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Minutes of Court—December 30, 1919—Judgment.

This cause coming at this time for the sentence of defendant; defendant being present in the custody of the United States Marshal, Gordon Lawson, Esq., Assistant U. S. Attorney, being present as attorney for the Government; and Warren L. Williams, Esq., appearing as counsel for defendant, the Court thereupon pronounces judgment upon said defendant, Harry Dean, for the offense of which he now stands convicted, viz.: Viol. Act of February 24th, 1919, amendment to Harrison Narcotic Act.

The judgment of the Court is that said defendant be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term and period of four (4) years on the first count of the

Indictment, and that said defendant be imprisoned in the United States Penitentiary at McNeil Island, State of Washington, for the term and period of four (4) years on the second count of the Indictment, said term and period of four years on the second count of the Indictment to begin at the expiration of the sentence on the first count. It is further ordered by the Court that the defendant be, and he hereby is, granted a ten (10) days' stay of execution. [30]

In the District Court of the United States of America, in and for the Southern District of California, Southern Division.

No. 1813—CRIM.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Chas. N. Williams, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing seventy-two typewritten pages, numbered from 1 to 72, inclusive, and comprised in one volume, to be a full, true and correct copy of the indictment, arraignment and plea, minutes of the trial, defendant's requested instructions, verdict, sentence and judgment of the Court, petition for writ of error,

assignment of errors, order allowing writ of error, writ of error, citation on writ of error, praecipe and amended praecipe in the above and therein entitled action, and that the same together constitute the record in said action as specified in the said praecipe filed in my office on behalf of the plaintiff in error by his attorney of record.

I do further certify that the cost of the foregoing record is \$18.85, the amount whereof has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 6th day of February, in the year of our Lord one thousand nine hundred and twenty [73] and of our Independence the one hundred and forty-fourth.

[Seal]

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America in and for the Southern District of California.

By R. S. Zimmerman,

Deputy Clerk. [74]

[Endorsed]: No. 3459. United States Circuit Court of Appeals for the Ninth Circuit. Harry Dean, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District

Court of the Southern District of California, Southern Division.

Filed February 26, 1920.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

*United States Circuit Court of Appeals for the Ninth
Circuit.*

Upon Writ of Error to the United States District
Court for the Southern District of California,
Southern Division.

U. S. District Court No. 1813—CRIMINAL.

HARRY DEAN,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Statement of Plaintiff in Error of Errors to be
Relied Upon and Designation of Parts of Record
Necessary to be Printed for Consideration
Thereof, Under Section 8, of Rule 23 of Rules of
United States Circuit Court of Appeals, Ninth
Circuit.**

To the Clerk of the United States Circuit Court of
Appeals, Ninth Circuit.

Comes now Harry Dean, plaintiff in error, above
named, and files the following statement of the errors

upon which he intends to rely and of the parts of the records which he thinks necessary for the consideration of the said errors, to wit:

I.

That the Court erred in rendering its judgment against the plaintiff in error upon count one (1) of the Indictment in this cause, for the reason that the said count one (1) of the Indictment of said cause does not state facts sufficient to constitute a public offense, or any offense or crime against the laws or statutes of the United States of America, or the violation of any law or statute of the United States of America, whatsoever or at all.

II.

That the Court erred in rendering its judgment in this cause *in this cause* against the plaintiff in error upon count two (2) of the Indictment, for the reason that said count two (2) of the Indictment does not state facts sufficient to constitute a public offense, or any offense or crime against the laws or statutes of the United States of America, or the violation of any law of the United States of America, whatsoever or at all.

And the plaintiff in error, Harry Dean, designates the following part of the record as necessary to the consideration of said errors and requests that said part of the clerk's transcript of the record be printed, to wit:

Addresses and Names of Attorneys, Clerk's Transcript of Record, page 3.

Indictment, Count One, Clerk's Transcript of Record, page 4.

Indictment, Count Two, Clerk's Transcript of Record, page 6.

Arraignment and Plea of Plaintiff in Error, Clerk's Transcript of Record, page 9.

Minutes of the Trial, and, etc., Clerk's Transcript of Record, pages 12-20.

Verdict, Clerk's Transcript of Record, page 21.

Judgment, Clerk's Transcript of Record, page 30.

Clerk's Certificate to Transcript of Record, Clerk's Transcript of Record, page 73.

Citation on Writ of Errors, Clerk's Transcript of Record, I.

Writ of Error, Clerk's Transcript of Record, III.

This 24th day of February, 1920.

WARREN L. WILLIAMS,
SEYMOUR S. SILVERTON,
Attorneys for Plaintiff in Error.

[Endorsed]: 3459—Original. United States Circuit Court of Appeals, for the Ninth Circuit. Harry Dean, Plaintiff in Error, vs. United States of America, Defendant in Error.

Received copy of the within this 24th day of February, 1920.

GORDON LAWSON,
Asst. U. S. Atty.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. 1813—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HARRY DEAN,

Defendant.

**Order Extending Time to and Including March 1,
1920, to File Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered, that the defendant in the above-entitled cause, Harry Dean, may have to and including the first day of March, 1920, in which to docket and file the record of the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated at Los Angeles, California, February 4th, 1920.

BLEDSON,
United States District Judge.

[Endorsed]: No. 3459. United States Circuit of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Mar. 1, 1920, to File Record Thereof and to Docket Case. Filed Feb. 5, 1920. F. D. Monckton, Clerk. Refiled Feb. 26, 1920. F. D. Monckton, Clerk.

